

## **REMARKS**

This is in response to the final Office Action mailed March 27, 2002 and the Advisory Action mailed July 29, 2002. In the Advisory Action, the Examiner indicated that the Amendment filed June 27, 2002 was not entered. As a Request for Continued Examination under 37 C.F.R. § 1.114 is filed herewith, Applicants respectfully request consideration of the amendments above and remarks presented herein.

No new matter has been added and no new issues have been raised. The recitation of a freezing point depressant component comprising at least 2 polyols is supported by originally filed dependent claims 4 and 26 and by the specification at least at page 12, lines 1-5. Claims 4, 18 and 26 have been cancelled without prejudice.

### **Response to Advisory Action**

In the Advisory Action, the Examiner indicates that the inclusion of the term “at least 2 polyols” in the amended claims raises the issue of new matter. Applicants disagree. Each and every example formulation in the specification, as listed in Tables 1-7, includes both propylene glycol and glycerine. Furthermore, at page 12, lines 1-2, the specification states that “examples of preferred freezing point depressant components include polyols *and mixtures thereof*” (emphasis added). Applicants respectfully assert that it is impossible to include mixtures of polyols without having at least two. The preferred polyols listed at page 12, lines 2-4 include propylene glycol, glycerin, sorbitol and homologs, homopolymers and derivatives thereof and mixtures thereof. Thus, the term “at least 2 polyols” is amply supported.

### **Rejection under 35 U.S.C. §102(b)**

In the Office Action, claim 18 remains rejected under 35 U.S.C. § 102(b). While Applicants do not concede the correctness of the rejection, claim 18 has been cancelled. Applicants reserve the right to file a continuation application to pursue the subject matter of the cancelled claims. In light of the cancellation, withdrawal of the rejection is respectfully requested.

**Rejections under 35 U.S.C. § 103(a)**

In the Office Action, claims 1-17 and 19-37 remain rejected over the combination of Andrews (U.S. Pat. No. 5,569,461) and Richter (U.S. Patent No. 5,234,719).

Applicants respectfully traverse the continued rejection and request consideration of the remarks presented herein.

It is respectfully submitted that the amended claims are not obvious over the combination of the remaining references.

Andrews et al., the primary reference, neither teaches nor suggests using 2 or more polyols in its antimicrobial teat dip composition. Andrews et al. instead teaches the use of propylene glycol alone as a skin softening agent. See col. 4, lines 6-14. In contrast, the present invention requires an admixture of 2 or more polyols to be used as a component of the freezing point depressant of the present invention.

It is respectfully submitted that neither Andrews et al. nor Richter et al. provide any motivation to combine their teachings. First, and importantly, Richter et al. is directed to microbicidal compositions for sanitizing food contact surfaces and for disinfecting critical day care and health care environments. See col. 1, lines 9-11. One of skill in the art would therefore not look to this reference to modify the primary reference. Different considerations pertain to the different fields of the two references. For example, teat dip compositions must be suitable for use on skin, and must therefore have properties such as humectancy and lubricity so as to prevent irritation. Nowhere does the secondary reference teach or suggest that such properties are important or necessary therein.

Second, and contrary to the assertion the Office Action, the teaching in the Richter et al. reference regarding “a component which may be used to contain various constituents in solution over various temperature ranges” does not provide any motivation to modify Andrews et al. The cited portion of Richter et al. (Col. 8, line 62 to col. 9, lines 3-12, as cited in the previous Office Action) clearly teaches that anionic and nonionic surfactants are used to maintain constituents in solution over various temperature gradients. However, the compositions taught in Andrews et al. are not unstable. There is no need to modify them to make them stable or to maintain a

homogenous solution. There is no teaching in either Andrews et al. or Richter et al. to the contrary.

Furthermore, one would not be motivated to modify Andrews et al. with Richter et al. because the references themselves preclude their combination. One would find no reason whatsoever to modify Andrews et al., which teaches compositions containing 5-80% propylene glycol, with Richter et al., which teaches less than 60% by weight of the composition as a polyfunctional organic alcohol (including propylene glycol). (Compare Andrews et al., col. 4, lines 6-14 with Richter et al., col. 8, lines 45-51.) Because Andrews et al. already contains the amount of propylene glycol that Richter et al. suggests, any combination would be completely unnecessary for the suggested purposes of this component.

In order to establish obviousness, it is axiomatic that there must be some suggestion or motivation to modify the reference or combine the teachings. As discussed above, the references do not provide such motivation. Additionally, one of ordinary skill in the art, upon reading references, would not combine them absent motivation provided by the instant specification. Therefore, the combination of Andrews et al. and Richter et al. would only be made with the guidance provided by the instant specification. Obviousness cannot be based on hindsight reconstruction.

Even if one were to combine the references for some other reason, the present invention would not result. Richter et al. (in its most relevant aspect) would provide guidance to use less than 60% by weight of polyols. Andrews et al. would provide guidance to use caprylic and capric acids in a teat dip antimicrobial composition. The combination does not provide for a C6-C12 fatty acid to be used in combination with a freezing point depressant comprising at least 2 polyols that comprise greater than 60% by weight in a teat dip antimicrobial composition.

For these reasons, it is respectfully requested that the rejection of the claims under 35 U.S.C. § 103(a) be withdrawn.

**Conclusion**

In view of the amendments and comments presented herein, favorable reconsideration in the form of a Notice of Allowance is respectfully requested. The Examiner is invited to contact the undersigned if it is believed that doing so will further prosecution of the application.

Respectfully submitted,

MERCHANT & GOULD P.C.  
P.O. Box 2903  
Minneapolis, MN 55402-0903  
612.332.5300

Date: 8/27/02



*Wendy M. Seffrood*  
Wendy M. Seffrood  
Reg. No. P-52,205  
WMS:kf



VERSION WITH MARKINGS TO SHOW CHANGES MADE

Claims 4, 18 and 26 were cancelled. Claims 1 and 19 were amended as follows:

1. (ONCE AMENDED) An antimicrobial composition comprising:  
in the range of 0.01 to 5 wt. % of a C6-C12 fatty acid; and  
a carrier medium including a freezing point depressant component,  
wherein the freezing point depressant component:
  - a) comprises at least 2 polyols; and
  - b) makes up greater than 60 wt. % of the total composition.
  
19. (TWICE AMENDED) A method for controlling mastitis in milk producing animals, the method comprising: applying an antimicrobial composition to a teat of an animal wherein the antimicrobial composition comprises in the range of 0.01 to 5 wt. % of a C6-C12 fatty acid and a carrier medium including a freezing point depressant component, wherein the freezing point depressant component comprises at least 2 polyols and makes up greater than 60 wt. % of the composition.

**RECEIVED**  
SEP 05 2002  
TECH CENTER 1600/2900